

4200-1733

**6624

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

HERBERT PADUA MENDEZ
AIDA IRIS COTTO ORTA
Debtor(s)

FIRSTBANK PUERTO RICO
Movant

HERBERT PADUA MENDEZ
AIDA IRIS COTTO ORTA
Debtor(s)
ALEJANDRO OLIVERAS RIVERA, ESQ.
Chapter 13 Trustee

Respondents

CASE NO. **07-06455 (SEK)**

CHAPTER 13

MOTION FOR RELIEF FROM STAY PURSUANT TO 11 U.S.C. §362(d)(1)

TO THE HONORABLE COURT:

COMES NOW secured creditor **FIRSTBANK PUERTO RICO**, hereinafter referred to as ("**Movant**"), through the undersigned counsel and very respectfully states, alleges and prays as follows:

1. **Movant** holds a secured claim against **Debtor's** estate, by virtue of being the holder in due course of a Mortgage note in the principal sum of ONE HUNDRED SIXTY NINE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$169,750.00), plus interest at an annual rate of 6.00% as it appears from deed number 750 executed on September 27, 2004, which encumbers **Debtor's** real property located at "SR 172 LOT 2 BRISAS DEL MONTE, CAGUAS, PUERTO RICO" . **See claim no. 7, as amended.**

MOTION FOR RELIEF FROM STAY PURSUANT TO 11 U.S.C. §362(d)(1)
IN RE: HERBERT PADUA MENDEZ (07-06455-SEK)

2. By filing the instant petition, all foreclosure proceedings against **Debtor(s)** and the aforementioned property were stayed.

3. **Debtor** is indebted to **Movant** in the principal amount of \$157,502.55 plus interest, late charges, advances and attorney's fees. Said debt is secured by a deed of mortgage upon the property described in paragraph one (1).

4. **Debtor's** confirmed payment plan provided for direct payment to **Movant** of post-petition installments of the loan identified in claim no. 7, as amended.

5. **Debtor** is in arrears THREE (3) post-petition payments of \$1,114.04 each, plus late charges in the amount of \$1,119.58, fees in the amount of \$137.50 and legal fees in the amount of \$150.00, for a total post-petition arrearage of \$4,749.20. That a regular payment of \$1,114.04 will become due on the First (1st.) day of April, 2010. Said payment is not part of the total post-petition arrearage herein expressed.

6. The arrearage expressed herein does not pertain to the pre-petition arrears which were to be cured through the plan.

7. That **Debtor** has failed to provide **Movant** with adequate protection of its secured interest in the property identified in paragraph one (1), and his/her failure to keep current with his/her payments to **Movant** is sufficient cause for this Honorable Court to grant the relief herein requested. **11 U.S.C. §362(d)(1)**

8. That **ALEJANDRO OLIVERAS RIVERA, ESQ.**, is the duly appointed Chapter 13 Trustee in this case.

MOTION FOR RELIEF FROM STAY PURSUANT TO 11 U.S.C. §362(d)(1)
IN RE: HERBERT PADUA MENDEZ (07-06455-SEK)

9. That **Debtor** is not in active in military service as evidenced by the enclosed certifications regarding compliance with the applicable provisions of the Servicemember's Civil Relief Act ("SCRA"), 50 U.S.C. App. § 501 *et seq.*

WHEREFORE, **Movant** respectfully prays for an order of relief from the stay provided by **11 U.S.C. §362(a)**, thus authorizing **Movant** to proceed with the foreclosure of the mortgage against the property herein described with such further relief as it may deem just and proper.

NOTICE

Within fourteen (14) days after service as evidenced by the certification, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. **Local Rule 4001-1.** If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this the 11th day of March, 2010.

I HEREBY CERTIFY: That on this same date, I electronically filed the foregoing document with the Clerk of the Court using the **CM/ECF SYSTEM** which will send notification of the present filing to the parties in this case registered in said system; by regular mail to non CM/ECF participants and by certified mail to Debtor(s), his/her attorney, the Chapter 13 Trustees and the U.S. Trustee.

MOTION FOR RELIEF FROM STAY PURSUANT TO 11 U.S.C. §362(d)(1)
IN RE: HERBERT PADUA MENDEZ (07-06455-SEK)

VAZQUEZ & VIZCARRONDO LLP

Attorneys for secured creditor FIRSTBANK PUERTO RICO

PO BOX 195389

SAN JUAN, PUERTO RICO 00919-5389

TEL. (787) 999-5252

FAX (787) 751-1038

rbras@vvalaw.com

s/RAFAEL BRAS BENITEZ

USDC-PR BAR NO. 220205

P.R. LBF F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In Re:

HERBERT PADUA MENDEZ
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Debtor(s)
ALEJANDRO OLIVERAS RIVERA, ESQ.
Chapter 13 Trustee

Respondents

CASE NO: 07-06455 (SEK)

CHAPTER 13

INDEX

NOTICE OF MOTION FOR RELIEF FROM STAY UNDER 11 U.S.C. § 362

To the above named respondent(s):

You are hereby notified that on _____ the above named movant(s) filed a Motion Seeking Relief from the Automatic Stay under 11 U.S.C. § 362.

Service of the motion and notice must be made within three (3) days after issuance of the notice. A certificate of service must be file forthwith, but no later than seven (7) days after service is done. If the certificate of service is not timely filed, the Court may deny the motion for failure to give notice within three (3) days from issuance.

You must file an answer to the motion within fourteen (14) days from the service of this notice, and serve such answer upon movant or his attorney **RAFAEL BRAS BENITEZ, ESQ.** whose address is **VAZQUEZ, & VIZCARRONDO LLP, PO BOX 195389, SAN JUAN, PR 00919-5389.**

IF YOU FAIL TO TIMELY ANSWER AS SET FORTH HEREIN, AN ORDER MAY BE ENTERED AGAINST YOU GRANTING THE RELIEF REQUESTED BY THE MOVANT.

If a timely answer is filed, then _____ at _____ a.m./p.m. at the United States Bankruptcy Court, U.S. Post Office and Courthouse Bldg., 300 Recinto St., _____ Floor, Courtroom _____, Old San Juan, PR, is fixed as the time and place for the preliminary and/or final hearing on such motion.

CELESTINO MATTA-MENDEZ, CLERK
United States Bankruptcy Court

By: _____

Date of Issuance: _____

Rule 4001-1 of the Local Rules of the U.S. Bankruptcy Court for the District of Puerto Rico establishes the following procedure for Motions Requesting Relief From Stay under 11 U.S.C. § 362:

1. Movant must serve both the motion for relief from stay and a notice that substantially conforms to P.R. LBF J within three (3) days of issuance of the notice.
2. Respondent must file an answer to the motion for relief from stay within fourteen (14) days after issuance of the notice. If respondent does not file a timely answer, the Court may enter judgment for the movant and take the matter off the Court's calendar.
3. The notice must set forth the specific date for the preliminary hearing on the motion for relief from stay.
4. Pursuant to 11 U.S.C. § 362(e), the hearing date specified in the notice may be a preliminary hearing, or may be consolidated with the final hearing, as will be determined by the Court.
5. If movant seeks relief with respect to a stay of an act against property under 11 U.S.C. § 362(d)(1) or (d)(2), the motion must be accompanied by the following supporting documents:
 - (a) true copies of all notes, bonds, mortgages, security agreements, financing statements, assignments, and any other document on which the movant will rely at the hearing;
 - (b) a report of any appraiser whose testimony is to be presented at the hearing;
 - (c) a statement of amount due, including a breakdown in the following categories:
 - (1) unpaid principal;
 - (2) accrued interest, from and to a specific date;
 - (3) late charges, from and to a specific date;
 - (4) attorney's fees;
 - (5) advances for taxes, insurance, and like concepts;
 - (6) unearned interest;
 - (7) any other charges; and
 - (8) a per diem interest factor.
6. At least three (3) days prior to the hearing, respondent must file with the Court and serve upon movant – or his attorney if so represented – a report of any appraiser whose testimony is to be presented at the hearing, as well as a copy of any other document which it will use at the hearing.
7. If the motion for relief from stay is contested, counsel for the parties must confer with respect to the issues raised in the motion, in order to determine whether a consent order may be entered and/or to stipulate to relevant facts about the value of the property, and to the extent and validity of any security agreement.

CERTIFICATE OF SERVICE

I certify under penalty of perjury that I served a copy of the within Notice and Motion upon _____

on _____ By: _____
(Date of Service) (Describe Mode of Service)

Executed on: _____
(Date)

SIGNATURE



REQUEST FOR DISMISSAL

ATTORNEY VAZQUEZ VIZCARRONDO

Loan Number 6624

Debtor HERBERT PADUA-MENDEZ

Co-Debtor AIDA I COTTO-ORTA

BKR # 07-06455 CHPT 13 DATE FILED 10/31/2007

Payments due 3 Pre-pet 0 Post-pet 3

Due Date Principal Balance

Post- Petition arrears:

3 Months at \$ 1,114.04 \$ 3,342.12

Months at \$ -

Late Charges at \$ 1,119.58

Legal Fees \$ 150.00

Foreclosure Fees \$ -

Inspections \$ 137.50

Bad Chek Fee \$ -

Other Charges \$ -

TOTAL \$ 4,749.20

All installment payments must be made up to the current month, including legal fees & late charges

Verified Declaration

I, the undersigned, declare under penalty of perjury that the amounts claimed by Movant in the foregoing Request for Dismissal, represents accurately the information kept in accounting books and records kept by Movant in the ordinary course of business. I further declare under penalty that I have read the foregoing Motion from the Automatic Stay and that the facts alleged are true and correct to the best of my knowledge.

Name BANKRUPTCY OFFICER

This Request for Dismissal was prepared This 4 day of March of 2010



***UNSWORN STATEMENT
UNDER PENALTY OF PERJURY***

The undersigned hereby certifies the following under penalty of perjury:

Debtor (s) Herbert Padua Mendez / Aida Cotto Orta

- Loan Number: 6624
- Principal balance: \$ 157,502.55
- Monthly late charges: \$ 50.89
- Pre-petition arrears and other charges: \$ 475.00
- Post-petition arrears: \$ 1,639.93
- Other charges: \$
- Last post-petition installment was received on 02/02/10 applied to 12/01/09
- No post-petition payments have been made.
- Present value interest compounded at 6.000000%, per annum.

This 4 day of March of 2010.

Name: Juan A Benitez
Title: Bankruptcy Officer

IN RE '6624

CASE NO

Herbert Padua Mendez

Aida Cotto Orta

Q# 07-06455

Debtor(s)

CHAPTER: 13

VERIFIED STATEMENT

I, Juan A Benitez of legal age Single resident of
San Juan, Puerto Rico, state under penalty of perjury as follows;

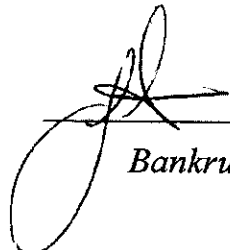
That as to this date March 04, 2010 by search and review of the records
kept by FirstBank in the regular course of business in regard to debtor
account with this bank there is no information that will lead the undersign to belief that
debtor is a service member either on active duty or under a call to active duty, in the
National Guard or as a commission officer of the Public Health Services or the National
Oceanic and Atmospheric Administration (NOAA) in active duty.

The bank has not received any written notice from debtor that his military status

has change.

That as part of my search I examined the following documents or records
available to me.

In testimony, wherefore I sign this document under penalty of perjuring in San
Juan, Puerto Rico on March 04 2010.




Bankruptcy Clerk

Department of Defense Manpower Data Center

Mar-11-2010 10:17:35



Military Status Report
Pursuant to the Service Members Civil Relief Act

 Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
PADUA MENDEZ	HERBERT	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
Report ID:P8GLJGBDCI

Department of Defense Manpower Data Center

Mar-11-2010 10:18:32



Military Status Report
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
COTTO ORTA	AIDA	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

A handwritten signature in black ink that reads "Mary M. Snavely-Dixon".

Mary M. Snavely-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

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Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
Report ID:D7I7TMV6NF